NOTES OF CASES.

Brokers—Agreement to Pay "Fifty-Fifty" on What Is Saved in Purchase of Property.—In Chafin *v.* Main Island, etc., Co., 85 W. Va. 459, 102 S. E. 291, it was held that where one who is desirous of purchasing certain property expresses a willingness to pay a certain price therefor, and agrees with another to give him "fifty-fifty" on what is saved if he can purchase the property at a less price, and through the efforts of such other person it is purchased at a less price than that named, such second person will be entitled to receive one-half of the difference between the price at which the purchaser was willing to purchase and the price at which the property was actually secured.

The court said in part: "The defendant's contention is that the promise of the general manager to give plaintiff 'fifty-fifty' on what was saved does not mean anything. That this expression has a well-defined meaning cannot be doubted. It conveys to the mind immediately the division of the subject of discussion into halves, and we are not willing to admit that we are so ignorant of terms in common usage as not to know the meaning of this phrase. The object of construction of contracts is to give effect to the agreement of the parties, so far as it can be ascertained from the language used, and it matters not that the agreement may be expressed in the vernacular of the street. It is clear that the court below gave the proper construction to the agreement of the parties; that is, that each side would get the benefit of one-half of the difference between $27,200, at which Mr. Laing was willing to close, and such less sum as they might succeed in purchasing the property for."

Intoxicating Liquors—Right to Recover Liquors Held by Public Authorities for Use in Prosecution.—In Azparren *v.* Ferrel, 191 Pac. 571, the Supreme Court of Nevada held that intoxicating liquors seized for use in prosecution for violating the prohibition law cannot be replevied.

The court said in part: "We are of the opinion that where personal property is withheld by a district attorney as evidence against persons charged with crime, the accused has not the right to regain possession of the property by claim and delivery. The seizure and retention of the liquors in this case by the district attorney in no manner denies or affects the title of the true owner, or the ultimate right of his agent or servant to their possession, but simply postpones his right until the exigencies of the prosecution are satisfied. The plaintiff has shown no right to the immediate possession of the property as against the power of the magistrate's court for police purposes.

"The proceedings for the claim and delivery of personal property were not intended to repeal or render nugatory the police power of retention for purposes of public justice, and the owner's right of possession, his agent's or servant's, cannot be enforced while the circumstances justify such retention. Simpson *v.* St. John, 93 N. Y. 363. Said the court:

"'It is not only the common practice, but the requirement of the common law, that articles which may supply evidence of guilt of a party accused, found in his possession or under his control, may be taken in possession by the officer officiating in making the arrest; and, indeed, it is the duty of such officer to take into his possession and retain such articles, subject to the power and direction of the court or justice having cognizance of the alleged crime. This principle is one of necessity in the administration of the criminal law, and it is generally recognized by the courts of the country with few, if any, exceptions.'" Commission & Stock Co. *v.* Moore, 13 App. D. C. 78; Comm. *v.* Dana, 2 Metc. (Mass.) 329; State *v.* Robbins, 124 Ind. 308, 24 N. E. 978, 8 L. R. A. 438; Spalding *v.* Preston, 21 Vt. 9, 50 Am. Dec. 68; McDonald *v.* Weeks, 2 Tenn. Civ. App. 600; United States *v.* Wilson (C. C.), 163 Fed. 338; 24 Am. & Eng. Ency. of Law, 505.

"The production and identification of the seized liquors are essential to the conviction of the accused plaintiff upon the charge of having intoxicating liquors upon a public road. If, by his proceedings, the liquors are to be taken by judicial process from the officer, upon whom rests the duty of prosecuting the offender, it would be possible for the accused to put out of the way evidence necessary to his conviction. But it is strenously objected that the particular liquors held to be offered as evidence in the pending prosecution against plaintiff were obtained, and are held, in ruthless violation of the law, without a warrant, either for the arrest of the plaintiff, the automobile, or its contents. These are questions that may properly be presented for deliberative consideration when the liquors are offered as evidence. We advance no opinion as to the competency of the evidence under the existing facts and circumstances under which they are held, but simply decide that a writ of replevin cannot be converted into a process to render nugatory the administration of the criminal law. We decline to take from the Prohibition Act, conceded to be difficult of enforcement, aught that will diminish its efficiency. While at no time should the act be given a construction that will make it an instrument of dishonesty, of oppression, and an object of odium, still we shall not suffer one charged with its violation, in a proceeding under claim and delivery, to defeat the whole object and intention of the law."